IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.421 of 1992
Date of Decision:- 07.02.2007

Swaran Singh ....Petitioner(s)

through
Mr.A.S.Kalra, Advocate

vs.

State of Punjab ....Respondent(s)

through
Mr.R.D.Sharma, DAG, Haryana.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

This criminal revision petition is directed against the judgment and order dated 7.11.1990 passed by the learned Judicial Magistrate Ist Class, Amritsar whereby the petitioner was convicted under Section 9 (a) of the Opium Act, 1878 and sentenced to undergo rigorous imprisonment for nine months with a fine of Rs.500/-, in default whereof he was required to further undergo rigorous imprisonment for three months, as well as against the judgment dated 5.6.1992 passed by the learned Additional Sessions Judge, Amritsar whereby the petitioner's appeal was dismissed and the above-stated conviction and sentence was upheld.

Briefly stated, the prosecution case is that on 11.10.1984 a police party while patrolling, saw the petitioner coming on G.T.Road near the turning of village Muchhal and on suspicion he was apprehended. On being searched, the petitioner was found to be carrying a *Jhola* (bag) in his right hand containing opium wrapped in a glazed paper. 10 Grams of opium was separated as sample and put into a small box whereas the residue

opium, which on being weighed was found to be 1.990 Kgs., was put into another box and sealed separately as a case property vide memo Exhibit PA. Ruqa Exhibit PB was sent to the Police Station on the basis of which formal F.I.R. Exhibit PB/1 was recorded.

The petitioner was charge-sheeted under Section (9)(a) of the Opium Act, 1878. He however did not plead guilty and claimed trial. The prosecution examined two witnesses who were police officials and were members of the party which was patrolling at the time of occurrence. The affidavits of other police officials were also tendered into evidence. The petitioner also led his defence evidence.

Both the Courts below, upon consideration of the entire evidence on record, have believed the prosecution version after holding that the link evidence is completed. The petitioner's defence evidence has been disbelieved. Consequently, he has been held guilty and sentenced as stated above.

I have heard learned counsel for the petitioner as well as learned State counsel and have perused the impugned judgments.

The petitioner's contention that no independent witness was joined at the time when he was allegedly apprehended or that there are serious discrepancies in the evidence led by the prosecution have been elaborately dealt with and rightly so by the learned First Appellate Court. As no case of perverse findings or misreading of the evidence is made out, no interference by this Court in exercise of its revisional jurisdiction, is warranted.

Faced with the situation, Shri Kalra, learned counsel for the petitioner contends that the occurrence had taken place on 11.10.1984 i.e.

about 23 years back and since then the petitioner has never been found to be involved in any other such like case or for that matter in any other criminal case. He also contends that the petitioner was released on bail way-back on July 9, 1992 and he has never misused the said concession in any manner. It is also contended that out of the total sentence of nine months, the petitioner has already undergone actual sentence of 35 days. According to learned counsel for the petitioner, the petitioner is now a grown-up old person and it will be too harsh to send him to jail to undergo remainder of the sentence.

Mr.B.S.Baath, learned Assistant Advocate General, Punjab fairly states that the petitioner has not been reported to be involved in any other criminal case after the occurrence in question nor he is reported to have ever misused the concession of bail granted by this Court.

After hearing learned counsel for the parties and having regard to the above-noticed mitigating circumstances, highlighted by learned counsel for the petitioner, I am of the considered view that having regard to the fact that the occurrence had taken place about 23 years back and that the petitioner has not misused the concession of bail for the last about 15 years and has already undergone 35 days of actual sentence, it is a fit case to reduce the sentence of imprisonment awarded to the petitioner to the extent he has already undergone.

Consequently, the impugned judgments and order dated 7.11.1990 passed by the Judicial Magistrate Ist Class, Amritsar and 5.6.1992 passed by the Additional Sessions Judge, Amritsar respectively are modified to the extent that instead of rigorous imprisonment for nine months, the said sentence will be to the extent of the period which the

petitioner has already undergone. However, the fine of Rs.500/- imposed upon the petitioner deserves to be enhanced to Rs.5,000/-. I order accordingly. The petitioner is directed to deposit the enhanced amount of fine within a period of three months, failing which the petitioner shall be required to undergo the rigorous imprisonment as awarded by the Courts below.

Disposed of.

February 07, 2007 **(SURYA KANT)**
poonam **JUDGE**